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NOTICE OF ALLOWANCE AND FEE(S) DUE

30031 7590 04/03/2009

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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BRIARCLIFF MANOR, NY 10510

EXAMINER

KOPPIKAR, VIVEK D

ART UNIT

PAPER NUMBER

3686

DATE MAILED: 04/03/2009

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,506

12/10/2001

James Pawlikowski

011142US2

9080

TITLE OF INVENTION: SYSTEM AND METHOD FOR UPGRADING A MEDICAL DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	07/06/2009

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
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P.O. Box 1450
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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

30031 7590 04/03/2009

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Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/016,506 12/10/2001 James Pawlikowski 011142US2 9080

TITLE OF INVENTION: SYSTEM AND METHOD FOR UPGRADING A MEDICAL DEVICE

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1510 \$300 \$0 \$1810 07/06/2009

EXAMINER	ART UNIT	CLASS-SUBCLASS
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KOPPIKAR, VIVEK D 3686 705-002000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____

Date _____

Typed or printed name _____

Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,506	12/10/2001	James Pawlikowski	011142US2	9080
30031	7590	04/03/2009	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510			KOPPIKAR, VIVEK D	
			ART UNIT	PAPER NUMBER
			3686	
DATE MAILED: 04/03/2009				

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 731 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 731 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability	Application No.	Applicant(s)	
	10/016,506	PAWLIKOWSKI ET AL.	
	Examiner	Art Unit	
	VIVEK D. KOPPIKAR	3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/23/09.
2. ☒ The allowed claim(s) is/are Claims 1, 3-9, 11, 12, 14-19, 22, 24-29 and 31-51 (Renumbered 1-44).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date ____. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other ____. |
|---|---|

DETAILED ACTION

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael W. Haas on March 20, 2009.

The application has been amended as follows:

In the Claims:

In line 6 of Claim 1, delete "control" and insert --controls-- in its place.

In line 24 of Claim 1, delete "the" and insert --a-- in its place.

In line 11 of claim 32 (Renumbered Claim 25), delete "on" and insert --one-- in its place.

In line 17 of claim 1, delete "modified" and insert --replaced-- in its place.

In line 23 of claim 32, add --wherein upgrading the pressure generating system comprises replacing a first operating routine with a second operating routing and causing a controller to execute the second operating routine so that the pressure generating system operates according to a second set of operating features and a user defined setting; and--

In line 21 of claim 49, add --upgrading the pressure generating system by replacing a first operating routine with a second operating routing and causing a controller to execute the second

operating routine so that the pressure generating system operates according to a second set of operating features and the user defined setting; and--

Allowable Subject Matter

2. Claims 1, 3-9, 11-12, 14-19, 22, 24-29 and 31-51 (Renumbered Claims 1-44) allowed over the prior art.

The following is an examiner's statement of reasons for allowance:

With regards to renumbered Claims 1, 10, 17, 25, and 42, the prior art of record does not teach or suggest the following features:

(A) The prior art of record does not teach or suggest:

maintaining a database for a plurality of pressure generating systems external to the pressure support systems, wherein the database includes (a) a serial number unique to each pressure generating system in the plurality of pressure generating systems, (b) one or more operating routines available to each pressure generating system in the plurality of pressure generating system, and (c) external access keys associated with each of the one or more operating routines.

US Patent Application Publication Number 2002/0026223, which was used in the Office Action dated September 23, 2008 is not prior art because Riff was filed on December 18, 2000 and claims priority to a provisional application filed on December 24, 1999. This provisional patent application, number 60/173,062, does not have support for the feature of maintaining a database for a plurality of pressure generating systems external to the pressure support system

wherein the database includes (b) one or more operating routines or upgrades available to each pressure generating system in the plurality of pressure generating systems.

This feature is present in neither the provisional patent application of Riff nor in US Patent Application Publication 2002/0026223. For example, in Sections [0008], [0022], [0023], [0025], and [0038] of the Riff Patent Application Publication 2002/0026223, there are disclosures regarding how a patient with an implantable medical device (IMD) may access current IMD diagnostic data for timely administration of medical therapies with the assistance of a data processor, however, Riff does not teach the step of maintaining a database for a plurality of pressure generating systems external to the pressure support system wherein the database includes (b) one or more operating routines or upgrades available to each pressure generating system in the plurality of pressure generating systems.

US Patent Number 6,158,433 to Ong teaches one or more pressure generating systems but does not teach (Ong: Col. 1, Ln. 40-49).

(B) The prior art does not teach or suggest the step of updating the database by assigning a new serial number for an upgraded pressure generating system.

US Patent Number 6,504,825 to Atkins teaches identifying individual pieces of electronic equipment with a single unique identifier and then using the previously assigned unique identifier in an ongoing and perpetual manner but Atkins does not teach assigning a new serial number in response to an upgrade.

Derwent Document RD 344081 teaches re-labeling a CPU in response to an upgrade to show that it belongs to a new type or is a new model, but it does not teach assigning a new serial number (to replace an existing serial number) in response to an upgrade.

(C) The prior art of record does not teach or suggest the step of enabling upgrading of the pressure generating system by enabling the first operating routine to be replaced responsive to the internal access key matching the external access key and wherein the upgrading of the pressure generating system comprises upgrading or replacing the first operating routine with a second operating routing and causing the controller to execute the second operating routine so that the pressure generating system operates according to a second set of operating features and the user defined setting.

U.S. Patent Number 5,715,390 to Hoffman teaches the concept of an access key however, the access key in Hoffman is for the purpose of ensuring that a consumer of electricity has paid for all the upgrades that they gain access to and in Hoffman the purpose of the access key is not to prevent an unauthorized upgrade or modification to the electric meter (Hoffman: Col. 1, Ln. 41-51) whereas in the instant application the use of the access key limits the type of the upgrade that can be provided to a given medical device and also enables only authorized manufacturers, suppliers or sellers of the medical device to control which medical device is upgraded and what upgrade is made to that device (Specification of the Instant Application, Detail Description Paragraph [0102]). Therefore, at the time of the invention, one of ordinary skill in the art would not have been motivated to look to the teachings of Hoffman because Hoffman is not directed to the same problem nor the same purpose as the instant invention.

U.S. Patent Number 5,901,311 to Labatte teaches a system for access key protection for computer system data. In Labatte, if a user enters in a matching access key they are permitted to make a write to the system (Labatte: Col. 5, Ln. 37-49), whereas in the instant application, a user with a matching access key is enabled only to replace one operating routine with another operating routine (Specification of the Instant Application, Detail Description Paragraphs [0029] and [0032]). Also, in Labatte, if an access key does not match, the user is still able to have read access to the system (Labatte: col. 5, Ln. 50-54), whereas in the instant application, if a user's (external) access key does not match the internal access key, no communication link is established (i.e. the user does not even have read access to the system) (Specification of the Instant Application, Detail Description Paragraphs [0085] and [0087]). Therefore, because the problems Labatte addresses are different from those of the instant application, at the time of the invention, one of ordinary skill in the art would not have looked to the teachings of Labatte for solutions to the problems addressed by the instant application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109.

The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Jerry O'Connor, can be reached at (571) 272-6787. The fax telephone number for this group is (571) 273-8300 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

/Vivek D Koppikar/
Examiner, Art Unit 3686
4/3/2009

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686